

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1452 of 1998

in

SPECIAL CIVIL APPLICATION No 7120 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DIVISIONAL CONTROLLER

Versus

GORDHANBHAI SHIVABHAI PATEL

Appearance:

MR HARDIK C RAWAL for Appellant
MR HK RATHOD for Respondent.

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 22/12/98

ORAL JUDGEMENT (Per A.L. Dave, J.)

1. Admitted. Mr. Rathod appears and waives service of notice of admission on behalf of the respondent. In

the facts and circumstances of the case, with the consent of the parties, the appeal is taken up today for final hearing.

2. The respondent was working as a Senior Assistant with the appellant-Corporation and he was ordered to be retired when he completed the age of 58 years. He claimed that he was entitled to continue till he completes the age of 60 years and before that he cannot be superannuated. The Corporation, on the other hand, granted extension of one year and asked him to produce a medical certificate issued by a Civil Surgeon. The respondent declined to do so and, therefore, he was superannuated/terminated from service when he completed 58 years of age. The respondent, therefore, raised a demand and it was referred to the Industrial Tribunal for adjudication. The Industrial Tribunal, after considering the rival side contentions and evidence before it, came to a conclusion that the respondent was entitled to be continued upto the age of 60 years and before that, he could not have been superannuated. It was also directed by the Tribunal that he should be deemed to be in service and be paid all wages with all consequential benefits. The Tribunal quantified the costs of the litigation at Rs.2000/-.

3. This order of the Tribunal was challenged before this Court in Special Civil Application N.7120 of 1997. The said Special Civil Application came to be rejected by order dated 6th October, 1998, by this Court, which order is in challenge before us in this Letters Patent Appeal.

4. Mr. Raval, learned advocate appearing for the appellant submitted that the Tribunal as also the learned Single Judge were in error in not considering the fact that the age of superannuation is 58 years and if the respondent wanted extension of two years, he was required to produce a medical certificate of fitness, which he declined to do. He has placed reliance on the Gujarat State Road Transport Employees' Service Regulation no.45 and 46 in support of his case which runs as under :-

"45. The Corporation may prescribe any conditions or tests which the employees may have to submit to before they are confirmed or continued in service.

46. Every employee shall satisfy such physical standards as may be prescribed by the Competent Authority from time to time.

Provided that the Corporation may, by general or specific orders, permit appointments to be made or incumbents to be retained in service without insisting on a medical certificate."

4.1 He submitted that even for continuation in service, physical fitness is essential and, therefore, when extension for two years was sought to be received by the respondent, he ought to have produced medical certificate and he having failed to do so, the Corporation was right in superannuating him at the age of 58 and the Tribunal as well as the learned Single Judge was in error in not considering these aspects. He has also submitted that similarly situated persons were also asked to produce such medical certificates and they have produced and, therefore, it is also to be considered even as a practice of the Corporation to ask for medical certificate.

5. On the other hand, Mr. Rathod has opposed this appeal strongly. He submitted that the respondent was, as of right, entitled to continue in service till he attained the age of 60 years. This is by virtue of policy of the Corporation. In respect of those employees, who came to be absorbed by the Corporation on Transport services being taken over by the State and who were earlier employees of private transport operators, the age of superannuation is 60 years. He has drawn our attention to such circulars produced on record which were also considered by the Tribunal as well as the learned Single Judge. He has placed reliance on the decision of the Honourable Supreme Court in the case of S.P. Dube v. M.P.S.R.T.C., AIR 1991 SC 276 as well as Pyarelal v. State of Punjab, AIR 1997 SC Weekly 3504 and submitted that no adverse change in the service conditions can be made of a workman and, therefore, there is no need to interfere with the order impugned in the appeal.

6. It is undisputed that the respondent was formerly an employee of a private transport operator, who came to be absorbed by S.T. Corporation upon transport services being taken over by the State. Circular No.93 produced at Annexure-C of the petition issued by the Transport Corporation's Central Office dated 20th April, 1971 indicates that following decisions were taken vis-a-vis such employees:

"(1) The age of retirement in respect of the employees of the private operators except Drivers will continue to be 60 years.

- (2) The employees of the private operators except Drivers, who have retired at the age of 58 years in view of the circular dated 2.9.1968 should be taken back in service, if they have not attained the age of 60 years and dues which are payable to them from the date of retirement till they are taken back in service should be paid to them.
- (3) In order that such employees of the ex-private operators could be taken back in service, the junior most person in the category concerned, may be retrenched from the service, if there is no vacancy, after giving them due notice under S.R. No.61. Such retrenched persons should be taken back in service immediately the next vacancy becomes available."

This circular was issued in supersession of the earlier circular dated 2.9.1968 and the contents are self-speaking. The employees so superannuated, if they had not completed the age of 60 years, were called back, given full back wages and employment as well and those who had completed the age of 60 years, were given full back wages. This aspect is not in dispute. Under the circumstances, the petitioner's case is squarely covered by this circular and it, therefore, cannot be said that any error is committed by the Tribunal or by the learned Single Judge in deciding the matter.

7. In the case of S.P. Dube (supra), it was held that in case of employees supposed to be superannuated at the age of 60 years and if the company is taken over by the State Government, a subsequent notification stating that the service conditions of the employees of taken over company would not be adversely affected and, subsequently, the Corporation fixing the age of superannuation at 58 years was held to be not applicable to such employees. Likewise, in case of Pyarelal v. State of Punjab also, it was held that service conditions cannot be varied or changed to the detriment of the employee, unilaterally.

8. Having considered all these aspects, we are of the firm view that the appeal is devoid of merits and no indulgence is required. We, therefore, dismiss the appeal. No costs.

[A.L. DAVE, J.]

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